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01-AFC-21C	
DATE	May 11 2009
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STATE OF CALIFORNIA
Energy Resources
Conservation and Development Commission

In the matter of:)	Docket No. 01-AFC-21
)	Compliance Proceeding
TESLA POWER PROJECT)	Comments of Robert Sarvey
)	On the extension of time
)	for Construction and Ownership
		Change for the Tesla Power Project

Preliminary Comments on Extension of Time for Construction and
Ownership Change for the Tesla Power Plant 01-AFC-21

Introduction

On April 24, 2009 PG&E requested that the Energy Commission grant the Tesla Power Project a change in ownership status and a five year construction extension for its license which is scheduled to expire on June 16, 2009. PG&E after its failed attempt at the CPUC to obtain a contract for the Tesla Power Plant is now requesting a license extension of five years. PG&E states "On July 17, 2008 Pacific Gas and Electric Company (PG&E) entered into an agreement to acquire from FPLE all of the outstanding membership interests of Midway Power, LLC which holds all the assets, land, emission reduction credits, development rights, and permits associated with the TPP site." PG&E is wrong in that the project does not have a complete set of emission reduction credits, does not have a valid authority to construct or a PSD permit. (Attachment A) The project

has not acquired a water supply even though they have had five years to do so. Essentially the only permit the project has is its CEC license. That license is currently undergoing a requested amendment that was submitted on January 24, 2007. FPLE has failed to pursue the amendment and has not answered the CEC Staff's data requests which were submitted on February 14, 2007 over 26 months ago. The projects license with the CEC is not even complete due to the amendment.

PG&E states that there is good cause to grant this five year extension for the TPP relying mainly on an outside chance that the CPUC will allow PG&E to build this project or that PG&E may be able to sell the project to another developer. PG&E states in its petition on page 2 that, **"PG&E does not have any plans at this time for the development of TPP."** Previous extension requests like the EAEC and the Russell City Project have been granted to merchant power generators who were pursuing a contract to build. In this case PG&E states that they have no plans to build the project at this time and the CPUC has already denied their bid to build the plant.

PG&E states on page 2 that, "The extension is necessary because PG&E will not commence construction of the TPP prior to June 16, 2009. PG&E only acquired the TPP in late 2008. If the deadline for commencement of construction is not extended, the value of a fully permitted power plant site would be lost." First of all as explained above the project is not fully permitted. The project lacks a water supply which the City of Tracy has committed to other projects. The project's authority to construct has expired and it does not have a valid PSD permit. The project has applied for a major amendment which has not been completed. The project no longer has a complete ERC package.

PG&E then states that good cause exists because the Commission has spent considerable time and resources in assessing and permitting the TPP. While the Commission did spend considerable time, a great deal more time and resources of the Commission will be needed to process the major amendment filed by FPL in January of 2007. Considerable time will be needed to secure a new water source and obtain new ERC's and evaluating the CEQA requirements

necessary for these changes. FPL has been negligent in allowing the ATC and the PSD permit to expire. FPL has not spent the time to negotiate for a water source or new PM-10 ERC's. In short while the Commission has expended considerable time and energy the applicant has lacked due diligence in maintaining the necessary permits and water supply and pursuing the filed amendment.

PG&E then claims that, "Since the time to prepare an Application For Certification (approximately 6 months), undergo Commission and other affected agency review (12 to 18 months) and to demonstrate compliance with the Conditions of Certification contained in the Commission's Decision (3 to 6 months) is lengthy and uncertain, a fully permitted "shovel ready" power plant site would allow the delivery of electricity to PG&E's customers in a relatively short time frame if PG&E seeks to develop TPP with the appropriate approval from the California Public Utilities Commission." As explained above, this project is not even close to shovel ready, lacking air permits, an approved CEC major amendment, a water supply, PM-10 ERC's, and other material government approvals. Even with all those requirements the TPP must then be approved by the Public Utilities Commission a process which PG&E has already attempted and failed. This approved project because of its size and complexity and lack of due diligence in maintaining previous material approvals will likely take as much time as a new application.

There exist many good reasons or causes not to approve this extension as elaborated in the following text.

Air Quality

The project owner will need a current Bay Area Air Quality Management District Authority to Construct. Their ATC permit is no longer valid pursuant to BAAQMD Rule 2-1-407. Section 1752.3 (a) requires that the Commission have

a valid FDOC to approve a project. Midway Power has requested a modification of the FDOC and has yet to complete that process.¹

Start-up and shutdown emissions may be required to be reduced or subject to the District's Best Available Control Technology review. As new technologies have emerged, the combustion turbine start-up and shutdown emissions, which can be as high as 30 to 40 percent of the facility total emissions, may be subject to reduction, alternative technologies, and Air District permit.

The projects NO₂ impacts combined with background concentrations exceed the California Ambient NO₂ Air Quality Standard.

The new EPA New Source Review guidelines for PM 2.5 emissions are now in effect and the project will need to demonstrate compliance with these new rules. The PSD permit has not been issued and currently and the project does not have the Federal permit or the BAAQMD permit required to begin construction.²

San Joaquin Valley

The TPP has an air quality mitigation agreement with the SJVUAPCD. Mitigation fees to be paid to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) will need to be renegotiated as the costs to fund control measures to reduce NO_x emissions have increased significantly since 2003. In 2003 the Tesla Air Quality Mitigation Agreement required \$5,000 a ton for NO_x reductions. A similar agreement with GWF Power (08-AFC-7) executed on March 19, 2009 with the SJVUAPCD required a payment of \$51,373 per ton of NO_x a ten fold increase.³

The Tesla PSD increment analysis prepared for the BAAQMD demonstrated that the maximum predicted PM-10 increment consumption in the project area

¹ http://www.energy.ca.gov/sitingcases/tesla/compliance/amendment/TPP_Petition_for_Post_Cert_Amendments_Nov_2006.pdf Appendix A page 1

² See Attachment 1

³ http://www.energy.ca.gov/sitingcases/traevexpansion/documents/applicant/2009-04-22_RESPONSE%20TO_PDOC_TN-51290.PDF page 8-14

was 140.19 ug/m3.⁴ This confirms testimony in the proceeding that the project area is already overburdened with new PM-10 sources.⁵

Water supply

The applicant has had five years to secure a wastewater agreement with the City of Tracy. The applicant has failed to do so. The City of Tracy is currently negotiating with two power projects to supply treated wastewater.⁶ A large majority of the analyses that was conducted for this project revolved around the water supply. The project currently does not have one and a new water supply and a lengthy CEQA analysis must **again** be conducted.

CPUC Approval

Most of the extension requests processed by the Commission are filed by merchant generators who are seeking a contract so they can begin construction. Normally no other agency approvals are necessary. PG&E in order to build this project must obtain a certificate of public convenience and necessity. In CPUC proceeding 08-07-018 PG&E attempted to obtain a CPCN. PG&E argued in that proceeding that because of the termination of the Bullard and Eastshore Projects and the delay of the Russell City Project they should be granted a CPCN to protect reliability because several of the long term projects selected in the 2004 procurement did not come to fruition. The CPUC denied PG&E a certificate stating, "We reiterate here that in D.07-12-052, we set a clear preference for a markets-first approach and set an intentionally high bar for UOG in support of this preference. We do not find that PG&E's application for the Tesla Generation Station has met that high threshold."⁷ PG&E in its extension application has advanced the same argument already rejected by the CPUC, "As the

⁴http://www.energy.ca.gov/sitingcases/tesla/compliance/amendment/TPP_Petition_for_Post_Cert_Amendments_Nov_2006.pdf page 49

⁵http://www.energy.ca.gov/sitingcases/tesla/documents/2004-06-22_FINAL.PDF pages 162-164

⁶http://www.ci.tracy.ca.us/uploads/tckeditor/File/city_council/agendas/2009/02/17/01d.pdf

⁷<http://docs.cpuc.ca.gov/efile/PD'91226.pdf> page 18

Commission is aware, a number of projects with whom PG&E contracted for delivery of electricity either failed to secure the necessary permits or were significantly delayed. The TPP would assist in providing customer protection if additional projects are unable to deliver electricity as required by their contracts with PG&E.” It is unlikely that PG&E will be able to receive permission from the CPUC to operate the TPP as they have already been denied.

Conclusion

PG&E has not shown good cause why the CEC should provide a five year extension. The previous applicant has allowed the air permit to expire. The project does not have the necessary emission reduction credits to secure the license. The projects PSD permit was never granted. The Commission is required by Section 1752.3 to have a DOC from the BAAQMD to approve the license and this is good cause to deny the extension. The project has no water supply and the majority of hearing time and CEQA evaluation revolved around the projects water supply so a lot of Commission time and energy will be necessary to amend this project. FPLE has filed an amendment but failed to pursue it. It is unlikely the applicant will be able to obtain a CPCN as it has already tried and failed to do so. The CEQA evaluation of this license is over 5 years old and numerous LORS applicable to the project have changed such as the new NO2 standard and the new PM 2.5 NSR rules. The amount of time necessary to amend this project and the likely hood that PG&E cannot obtain a CPCN should prompt the Commission to deny the license extension.

Attachment A

Email from Wayman Lee BAAQMD to Bob Sarvey dated 5-11-09

RE: Tesla Power Plant

Date: 5/11/2009 10:23:02 AM Pacific Daylight Time

From: Weyman@baaqmd.gov

To: Sarveybob@aol.com

CC: BYoung@baaqmd.gov, BNishimura@baaqmd.gov

Sent from the Internet ([Details](#))

Bob-

The District has not issued the Authority to Construct nor the Federal PSD permit for the Tesla Power Plant. The applicant requested an extension of the evaluation process to resolve issues associated with Emissions Reduction Credits (ERCs). The District has contacted PG&E, which is acquiring ownership of the Tesla Power Plant, to advise them of the application status.

Weyman

-----Original Message-----

From: Sarveybob@aol.com [mailto:Sarveybob@aol.com]

Sent: Thursday, April 30, 2009 12:14 PM

To: Weyman Lee

Subject: Tesla Power Plant

Mr. Lee,

Can you tell me whether the Tesla Power Plant ID # B 3424 still has a valid Authority to Construct or has it expired?

Thanks
Bob Sarvey